

**Notice of Proposed Rulemaking**

**Title 2. Administration**

**Division 7. Secretary of State**

**Chapter 9. Business Programs**

**Amending Section 21903, Title 2 California Code of Regulations (Special Handling Fees)**

**Adding Section 21903.5, Title 2 California Code of Regulations (Copy Fees)**

**Date: March 11, 2011**

**To: All Interested Parties**

**From: Secretary of State**

**Subject: Notice of proposed Amendment to California Code of Regulations Title 2, Section 21903 and Adding Section 21903.5**

**Authority**

Under authority established in Government Code section 12182, the Secretary of State proposes to amend section 21903 and add section 21903.5 to Title 2 of the California Code of Regulations. The proposed amendment and addition are related to special handling fees and copy fees.

**Reference**

The regulations implement, interpret and/or make specific Government Code section 12182.

**Informative Digest and Policy Statement Overview**

Pursuant to Government Code section 12182, the Secretary of State may by regulation establish fees to be charged and collected for copying and special handling in connection with filing documents, issuing certificates and other services performed by the office. The proposed regulations affect the Secretary of State's fees for issuing copies of Statements of Information online, which are the documents listing directors, officers, managers and other contact information that are filed annually or biennially by corporations and limited liability companies.

The proposed amendment moves established copy fees from an existing regulation to a separate new regulation solely related to copy fees and ensures no fee will be charged for issuing an electronic copy of a Statement of Information to the filer as part of an online filing transaction. Currently, Section 21903 of the California Code of Regulations sets special handling fees for processing documents, including specified copy fees. Amending Section 21903 will remove the existing copy fees in Section 21903 (c) (11), and a new separate section specific to copy fees for documents on file pursuant to Government Code section 12182 will be created. Also, this amendment clarifies and standardizes terms used within the section.

The Secretary of State proposes to add Section 21903.5 to highlight applicable copy fees for documents on file pursuant to Government Code section 12182 and to clarify a filer receiving an uncertified electronic copy at the time of filing a Statement of Information with the Secretary of State online will not be charged for receiving that electronic copy. This will provide an incentive to use the automated online filing service provided by the Secretary of State, which will make

this public information available to the public faster and through a more economical process than through manual filings.

**Written Public Comment Period**

The written public comment period will close April 29, 2011. Any person may submit comments about the proposed regulations. To be considered, the appropriate person identified below must receive written comments before the close of the written public comment period.

Written comments may be submitted to:

Anika Van Eaton  
Secretary of State  
Business Programs Division  
1500 11<sup>th</sup> St.  
Sacramento, CA 95814

Or to: [anika.vaneaton@sos.ca.gov](mailto:anika.vaneaton@sos.ca.gov)

You also may contact Todd Vlaanderen:

Todd Vlaanderen  
Secretary of State  
Business Programs Division  
1500 11<sup>th</sup> St.  
Sacramento, CA 95814

Or to: [todd.vlaanderen@sos.ca.gov](mailto:todd.vlaanderen@sos.ca.gov)

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed above no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Secretary of State, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

**Availability of Proposed Text and Statement of Reasons**

Copies of the proposed action, express terms, the Initial Statement of Reasons, and all of the information upon which the proposal is based are available for review upon request to Anika Van Eaton. The rulemaking file is available for review during normal business hours at 1500 11<sup>th</sup> St., Third Floor, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Anika Van Eaton, as specified above.

**Accessing Information Regarding This Rulemaking File on the Secretary of State Website**

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons can be viewed at <http://www.sos.ca.gov/>.

**Availability of Changes to Proposed Text**

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, the Secretary of State will make the full text of the changed regulations available for at least 15 more days before the date the regulations are permanently amended.

**Fiscal Impact**

There is no cost to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. There will be cost avoidance for the Secretary of State because once customers can immediately receive an electronic copy of their Statement of Information when they file online, more customers will use the website, resulting in less staff time, overtime and temporary help needed to process paper documents, as well as savings for ink/toner, postage and paper that otherwise would be used for providing copies. There will be no non-discretionary cost or savings imposed upon local agencies. There are no costs or savings in federal funding to the state.

**Significant Statewide Adverse Impact Directly Affecting Business, Including Ability to Compete**

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

**Impact on Jobs/Businesses**

Adoption of these regulations will not: 1) create or eliminate jobs within California, 2) Create new businesses or eliminate existing businesses within California, or 3) Affect the expansion of businesses currently doing business within California. The proposed regulatory action will benefit businesses by increasing the availability of current public information related to corporations and limited liability companies, while providing the speed and convenience of filing online and providing a free courtesy copy of the filed document to corporations and limited liability companies.

**Cost Impacts on Representative Person or Business**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Rather, there will be savings to business owners because they will have an online filing option that provides them with a free electronic copy of their filing. Business owners will have the option to save the electronic image on their computers for their records. If business owners decide to print the electronic copy of their Statement of Information they receive after filing online, there will be the minor cost associated with printing the document with their own printers. However, the increased convenience of filing online and the increased timeliness of immediately receiving the electronic copy will be more important than the minor cost of printing the document.

**Impact on Small Businesses**

The proposed regulatory action will benefit small businesses by increasing the availability of current public information, providing the speed and convenience of filing online and allowing corporations and limited liability companies to receive an electronic copy of their filed

Statements of Information without a fee when filing online. Currently, only certain corporations are allowed to file their Statements of Information online, but cannot receive a copy of the filed document online at the time of filing because the Secretary of State's website does not have the capability to provide such copies. Limited liability companies and all other corporations must submit paper filings and submit a separate mail or in-person request for copies with applicable fees through a separate process.

**Local Mandate**

The proposed regulations create no local mandate.

**Alternatives Statement**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Secretary of State must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Secretary of State, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Secretary of State invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

**Housing Costs**

The Secretary of State has made the determination that the action would have no effect on housing costs.

**Final Statement of Reasons**

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons for the amendments. Copies of the Final Statement of Reasons may be obtained from the listed contact person when it becomes available.